

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 855

Introduced by Assembly Member Brown

February 21, 2013

An act to amend Section ~~11502~~ 19996.2 of the Government Code, relating to ~~administrative law judges~~ *public employment*.

LEGISLATIVE COUNSEL'S DIGEST

AB 855, as amended, Brown. ~~Courts: administrative law judges.~~
State employees: absence without leave: reinstatement.

The State Civil Service Act provides that absence without leave for 5 consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked. The act provides a procedure for a permanent or probationary state employee to seek reinstatement and for the Department of Human Resources to grant reinstatement. Reinstatement may be granted if (1) the employee makes a satisfactory explanation to the department as to the cause of his or her absence and his or her failure to obtain leave, and (2) the department finds that the employee is ready, able, and willing to resume the discharge of the duties of his or her position or has obtained consent for a leave of absence.

This bill would provide that an employee may demonstrate that he or she is ready, able, and willing to resume the discharge of the duties of his or her position by submitting written verification from a licensed health care provider that shows the employee is released to return to work. The bill would require the department to grant reinstatement if the hiring authority invokes these provisions before the employee is absent without leave for 5 consecutive work days.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication and rulemaking proceedings of state agencies.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19996.2 of the Government Code is
2 amended to read:

3 19996.2. (a) Absence without leave, whether voluntary or
4 involuntary, for five consecutive working days is an automatic
5 resignation from state service, as of the last date on which the
6 employee worked.

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8 (b) (1) A permanent or probationary employee may, within 90
9 days of the effective date of ~~such a~~ separation described in
10 subdivision (a), file a written request with the department for
11 reinstatement; ~~provided, that.~~ However, if the appointing power
12 has notified the employee of his or her automatic resignation, any
13 request for reinstatement ~~must~~ shall be made in writing and filed
14 within 15 days of the service of notice of separation. Service of
15 notice shall be made as provided in Section 18575 and is complete
16 on mailing. Reinstatement may be granted ~~only if the~~ if both of
17 the following apply:

18 (A) The employee makes a satisfactory explanation to the
19 department as to the cause of his or her absence and his or her
20 failure to obtain leave ~~therefor, and the~~.

21 (B) The department finds that ~~he or she~~ the employee is ready,
22 able, and willing to resume the discharge of the duties of his or
23 her position or, if not, that he or she has obtained the consent of
24 his or her appointing power to a leave of absence to commence
25 upon reinstatement.

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27 (2) An employee may demonstrate to the department that he or
28 she is ready, able, and willing to resume the discharge of the duties
29 of his or her position by submitting written verification from a
30 licensed health care provider that shows the employee is released

1 *to return to work. However, nothing in this section waives the right*
2 *of the hiring authority to challenge the validity or accuracy of the*
3 *medical verification during any proceedings before the department.*

4 *(3) The department shall grant reinstatement if the hiring*
5 *authority invokes this section before the employee is absent without*
6 *leave for five consecutive work days.*

7 *(4) Except as provided in subdivision (c), an employee—so*
8 *reinstated pursuant to this section shall not be paid salary for the*
9 *period of his or her absence or separation, or for any portion*
10 *thereof.*

11 *(b)*

12 *(c) If the provisions of this section are is in conflict with the*
13 *provisions of a memorandum of understanding reached pursuant*
14 *to Section 3517.5, the memorandum of understanding shall be*
15 *controlling without further legislative action, except that if such*
16 *provisions of a. However, if the memorandum of understanding*
17 *require requires the expenditure of funds, the provisions*
18 *memorandum of understanding shall not become effective unless*
19 *approved by the Legislature in the annual Budget Act.*

20 ~~SECTION 1. Section 11502 of the Government Code is~~
21 ~~amended to read:~~

22 ~~11502. (a) All hearings of state agencies required to be~~
23 ~~conducted under this chapter shall be conducted by an~~
24 ~~administrative law judge on the staff of the Office of~~
25 ~~Administrative Hearings. This subdivision applies to a hearing~~
26 ~~required to be conducted under this chapter that is conducted under~~
27 ~~the informal hearing or emergency decision procedure provided~~
28 ~~in Chapter 4.5 (commencing with Section 11400).~~

29 ~~(b) The Director of the Office of Administrative Hearings has~~
30 ~~power to appoint a staff of administrative law judges for the office~~
31 ~~as provided in Section 11370.3. Each administrative law judge~~
32 ~~shall have been admitted to practice law in this state for at least~~
33 ~~five years immediately preceding his or her appointment and shall~~
34 ~~possess any additional qualifications established by the State~~
35 ~~Personnel Board for the particular class of position involved.~~